

26

THE RIGHT
METHOD
Of Maintaining
SECURITY
IN
PERSON and PROPERTY

To all the

Subjects of *Great-Britain*:

By a vigorous Execution of the present LAWS
OF THE LAND, a proper Exertion of the
Civil Power, in their respective Offices by
the legal Magistrates, explained and sup-
ported by Arguments and Historical Evi-
dence: With a short View of the Conse-
quences attending a Military Force; and some
Account of the remarkable Example of a late
Sheriff of *London*.

In a LETTER to

A MEMBER OF PARLIAMENT, *by*

To which is added,

Philonomos

The Opinion of Sir *Thomas More*, Lord High
Chancellor of *England*, on the same
important Subjects.

*Nulli vendemus, nulli negabimus, aut differemus, iustitiam aut
rectum.*

Magna Charta, Cap. 29.

*Rex præcipit ut pax sacro sanctæ Ecclesiæ & Regni solide con-
servetur & colatur in omnibus, & quod Jusititia singulis, tam
pauperibus quam divitibus, administretur, nulla habita per-
sonarum ratione.*

Westmonast. 1. Cap. 1.

S
UK
964

PHI

L O N D O N:

Printed for *John Whiston* and *Benj. White*, at
Boyle's Head, in Fleet-street. 1751.

1A
R6713

THE STATE

O H I O M

E C O N O M Y

BY JAMES W. BROWN

Rec. June 21, 1899.

~~Study to before writing or reading~~
~~and to copy of any paper~~
~~but it contains no history~~
~~of any kind of publick~~
OBSERVATIONS
ON THE
Power of SHERIFFS, &c.

AT present, Sir, when there is so general a complaint of corruption of manners, contempt of order, disturbing the public tranquillity, violating mens properties, and insulting their persons in the open streets, to the great scandal of justice, and the high reproach of the nation, it cannot certainly be esteemed an act of indecent liberty, if private persons take the freedom of enquiring into, and giving their sentiments of the causes of such things, and of the strange difference that there is between these, and former times, when our laws were not only excellent, as they still are, but were also executed with such a fullness of authority, and with so great punctuality, that there was no country in the world where they were so

B much,

much, or so generally respected, or where the people were so universally convinced, that their safety, peace, and prosperity, depended on their profound reverence for, and implicit obedience to them. This seems to be so much the more necessary, because with respect to the body politic, as well as the natural body, it is extremely difficult, if not impossible, to find out proper and effectual remedies for those evils with which it is afflicted, without understanding clearly the nature of the disease, there being nothing more evident, than that catching at crude, hasty, and violent proceedings, under colour of that trite aphorism, *that desperate cases require desperate remedies*, is more likely to increase, than to eradicate the mischief, or, which is still worse, introduce new and greater mischiefs than any of which we at present complain. That bold contempt of laws and magistracy, that dangerous licentiousness which shews itself so frequently amongst the common people, and that amazing increase of beggars, vagabonds, and lawless people, who have no visible or honest way of getting their livelihood, can never be reduced, much less extinguished, by such sort of expedients. It is therefore better to enquire, how these evils were formerly pre-

vanted, and so try whether, by a revival of the same methods, they may not be again suppressed.

As this is the most rational, so, without question, it will be found the most palatable method; for the *English* nation cannot easily digest either sudden alterations in their laws, or unknown, or unusual ways of executing them. This is a temper they have derived from their ancestors, which cannot easily be bent or broken; and if, from this very circumstance, a means could be devised, of restoring our antient polity, and with it the reverence and vigour of our Laws, it should seem that it ought rather to be cherished than discouraged; for if once the people can be persuaded, that the steps taken are for the support of their interest, and with no other view, than for the general good, it may be easily conceived, that invitation may go farther than command, that example may have the force of authority, and that a sense of the good consequences attending such regulation, will afford them a much higher sanction than can ever be derived from force.

But that I may not seem to deal altogether in generals, or be suspected of desiring to conceal my own meaning under a veil of fair words and specious promises, I will endea-

vour to digest what has occurred to me upon the subject, under a few general heads, and leave these to the consideration and improvement of yourself, and other wiser persons, than I presume myself to be. For tho' I hold it laudable, as well as lawful, to think, to speak, or to write, yet I am sensible it is very indecent for a private man to dictate what he esteems for the public good.

In the first place, I shall endeavour to shew, that it has been ever the genius of the *English* nation, to love and respect the laws, and to regard them, not as a burthen which they were obliged to bear, but as a birthright which they had a title to enjoy, which they were ever ready to maintain, and which was the highest object of their zeal and good wishes.

In the next place, it shall be my busines briefly to explain, that it has been the policy of our best princes, and the practice of the wisest administrations, to encourage and keep up this notion among the people ; and I shall briefly touch the principal methods that have been made use of for this just and salutary purpose, and the consequences that have attended them. By which it will appear, that the remedy now recommended is not any new invention, but the good old receipt of

our

our primitive patriots, by whom it was often tried, and never without success.

After this, it shall be my business to make it appear, as well from instances as arguments, that, from the nature of our constitution, the civil magistrates and ministers of justice, such as Mayors, Sheriffs, &c. have been invested with power sufficient for the due administration and execution of justice, not only on common and ordinary, but upon very great and extraordinary occasions; without recurring to the legislature for additional authority, and without the assistance of any other force, than what it was at all times in their power legally to raise.

In the next place, it will be proper to observe, as the nature of the subject requires, and makes it necessary, that Military Power is not the proper aid, and can very rarely, if ever, be called to the assistance of the civil magistrate, without infringing the constitution, or endangering our liberties, which flow from the law, and can only be preserved by it.

And lastly, I shall take notice of the inconveniences that have attended the want of observing the antient form, in respect to the execution of criminals, the great advantages that will naturally and indispensably flow from
the

the reviving it ; and the folly of supposing, that this cannot be fully and effectually done, without recurring to an assistance unknown to our laws, and which might be found useless and improper, if frequently recurred to, and so made, in time, at least in vulgar estimation, a point of necessity.

When we speak of the love borne by the *English* nation to their constitution and laws, it is necessary to observe, that this arose from that excellent form of government established among the *Saxons* ; their polity being the best adapted for the support of beneficial authority, and the maintenance of liberty, that was perhaps ever invented, and the advantageous consequences of which we feel to this day.

According to that form of rule, the executive power was in the King, agreeable to the methods prescribed by the laws ; the legislative in the Great Council of the nation.

All inferior and subordinate jurisdictions were fashioned after this model, which still prevails in cities and corporations, where the Mayor, the superior magistrates, and the common council, are a kind of Parliament in miniature. By this wise disposition, all discordancy was avoided, and the people were every where accustomed to see the same appearance of authority, which of consequence

pro-

produced a like acquiescing under what it prescribed, and a like reverence for the thing itself, which never could have been the case if different methods had been pursued in different parts of the kingdom.

The whole country being divided into shires, the Reeve, or governor, acted in a double capacity, as having both a judicial and ministerial office. In respect to the former he had his proper courts both civil and criminal, where all things were cognizable that had a tendency to promote justice and peace, by a strict adherence to the law. In his ministerial capacity, again he executed the mandates of the superior but legal power, and in both capacities had the whole force of his county to support and assist him. The importance of this office being so great, and such a confidence reposed in the integrity of him who executed it, the choice of the shire Reeve, or as we now write it Sheriff, was left to the inhabitants of the county.

This has indeed suffered some alteration in later times, but the choice is still made in the exchequer-chamber by the Chancellor and other great officers, except as to the county of *Middlesex*, which being granted to the city of *London*, the Sheriffs chosen by the citizens execute conjunctly the office of Sheriff

tiff of Middlesex in virtue of their election in London.

By this wise distribution of power to the Sheriff and other subordinate ministers of justice, the public tranquillity was effectually secured, and the due execution of all legal commands properly provided for, so that the course of justice, the power of its officers, and the ends for which it was administred, were made known to as well as felt by the meanest of the people. By this means, they were brought up in an habitual respect to the laws, and to those who were entrusted with the administration of them, as by the frequent change of these officers they could not help seeing that they obey'd the men for the sake of the law, and not the law through the power of the men ; which was a very prudent and a very useful caution, and productive of great advantages.

It was impossible that under such a constitution the people should be ignorant of the means of applying for and obtaining justice, or that knowing and feeling these they should not have a just sense of the benefit ; and this it was that raised in them so high a veneration for that kind of polity, which in ancient times was known by the names of the *Confessor's Laws*, not that he enacted them, but that

that his was the last reign in which they were thoroughly enjoyed, and for this reason after they were notoriously invaded, and in many respects abrogated by the *Normans*, the people continually languished and sighed for them.

It is a just and true observation of Sir *Walter Raleigh*, that the *Normans* when they first came over were averse to the laws, and fond of that military power by which they acquired and possessed their estates ; yet, in process of time, when their posterity became *Englishmen*, they thought and acted like *Englishmen*, and grew as desirous as the old *Saxon* natives, of restoring those laws as a national benefit, without the possession of which their estates would be precarious, and their condition unhappy. It was to this inclination of theirs, which sometimes exerted itself in an impetuous and violent manner, that we owe the restitution of our liberties, and the abrogating those innovations that were established by a spirit of conquest, and which were grievous and intolerable even to the children of those who introduced them. It was owing to this spirit that our constitution purged and freed itself, tho' by slow degrees, from the inconveniences that arose from military tenures, and that in process of time as

one mark of servility was destroyed after another, we came to enjoy what our original ancestors esteemed their birthright.

From hence it appeared, that the *English* spirit of liberty was very far from being a spirit of licentiousness. It was in truth the very reverse, it was the desire of living under the obedience of known laws, made by the consent of our representatives, executed in the ancient and legal manner, binding equally on all ranks and degrees of people, and affording every man a plain speedy and effectual method of redress in case he was wronged either in his person or property.

It was in short a spirit of liberty if considered in opposition to tyranny, but it was a spirit of obedience when referred to the constitution, and to the laws, which the people were so far from disputing, deriding or despising, that they were ever ready to rise up in their defence, of which various instances will occur hereafter; but my present busines is to shew that the people really loved the laws; and why they loved them; which is a point of very high consequence, and which notwithstanding is sometimes overlooked, or less considered than it ought to be.

There is certainly the greatest reason in the world for this love and reverence, and the

first

first step that artful and designing men will ever take towards depriving us of our liberties, which we hold from the law, and can hold no other way than by the law, will be to contrive in the most artful manner they can to lessen this reverence and affection, by representing our laws as obscure, antiquated, and confused, preferring such lawyers as are least likely to support the credit, and maintain the dignity of their profession ; and by putting slights on men of greater abilities and less flexible tempers, hinder them from aspiring to those charges which would be otherwise the objects of their ambition ; at the same time that a general relaxation of the legal discipline will be every where suffered to prevail, that men who prefer money to all things may be at liberty to depreciate their professions ; and offices of the highest importance being executed by unskilful deputies ; this accumulation of errors of all sorts may be ascribed to the law, and the people cheated, with a false idea, that it is no longer what it was ; whereas, in truth, the fault is not in the laws, but in the execution of them.

Whenever this shall come to be the case, the constitution will be represented as an unintelligible thing, the wise contrivances of our ancestors, as ceremonious follies, and a

distinction raised between the ranks of people who ought to be subject to the letter of the law, and such as are to be esteemed above it. A course directly opposite to that which was held in antient times, which brings me to the second point, and that is to shew what methods were formerly taken to excite the highest respect for the laws, and to engage the people to believe, that next to true religion they were the prime source of their freedom and happiness.

In the first place, then it was laid down as a fundamental maxim, that the majesty of the Prince was never so compleat, or so conspicuous, as when he presided in his great council in order to make laws for, and render justice to his subjects. At the three great festivals, *Easter*, *Whitsuntide*, and *Christmas*, King *Alfred* sat with his nobles in his court *de more*, which was so called from the spiritual and temporal nobles assembling at those great festivals *ex more*, without any summons. In this court the King heard the appeals of such as were injured by the determinations of the judges of other courts, false judgments reversed, and corrupt judges punished. In this court the King heard the appeals of the people that were injured by great

great men, who were too powerful to be called to account in any inferior courts.

The court *de more* was also a court of legislature. King Edward senior's laws were made in his court held at *Exeter*. *Athelstan's* laws were made in his court *de more*, held in the *Christmas* festival at *Exeter*; *Edmund's* at *Easter* festival, in his court *de more* at *London*; and *Canute's* at *Christmas* festival, in his court *de more* held at *Winchester*. At these grand solemnities the state of the nation was weighed and considered, provision of men and money made, for the support of church and state. The courts *de more* were certain as to time, but not as to places, till *William the Conqueror* appointed the certain places where he would always reside, and keep his court. At the three great festivals of these times, when the King was most easy of access, the people took opportunity to present their petitions; and the suffering *English* presented their petitions in *French*, to make them the more agreeable to the King; and when the King granted his favours to the *English*, he did it in a most free and agreeable manner.

In the reigns succeeding to these, we find that these high and necessary courts were sometimes omitted, often disturbed, and, when

when held frequently, exposed to great irregularities. But after the convulsions of state were in some measure over, they not only recovered their antient splendour, but became still more regular and perfect, assuming that form which has been since known under the name of Parliament, in which the supreme power of the nation resides, and where, upon mature deliberation, by the advice of the nobility, with the consent of the people, and the assent of the King, these laws are made, which become not only binding on the nation in general, but are in like manner the rules of their conduct by whom they were made, so long as they continue in force, and that is, till by the same authority they are abrogated or repealed. So that from this method of enacting laws, their importance and utility was held forth to the people, and as high a sanction given them as the faculties of the human understanding could invent.

We need not wonder therefore, that our antient lawyers, who were notwithstanding sufficiently attached to the crown, made no scruple of asserting, that Kings were bound by the laws, as well as their subjects, or of declaring, that our Monarchs were not absolute, but had for their superiors God and the

the laws. In their coronation oaths accordingly they promised in the presence of the former, to maintain the latter; and, upon the faith of this promise, the obedience of the subject was founded. Indeed it could not be otherwise, since, if it had, that known distinction between an arbitrary and a limited monarchy must have fallen to the crown, which however was constantly asserted and maintained by our best lawyers, and particularly by the Lord Chancellor *Fortescue*, who wrote an express treatise upon this subject, in the reign of *Edward* the fourth.

In the famous statute of treasons, it is, amongst other things, enacted, " That if a man slay the Chancellor, Treasurer, or the King's Justice of the one bench or the other, Justices in eyre, or Justices of assize, and all other justices assigned to hear and determine, being in their place doing their offices, it shall be understood and adjudged treason," than which it is not possible to produce a clearer instance of the reverence paid to the law, in the persons of her ministers. We may likewise add to this the observation of Sir *Edward Coke*, that there is a great difference made between a stroke or blow, before any of the courts of justice, where the King is representatively present,

and the King's court, where his royal person resides; for in the King's house *blood must be drawn*, otherwise the offender shall not lose his right hand, forfeit his lands and goods, and be liable to perpetual imprisonment; whereas a *stroke* or *blow* given in or before any of the courts of justice, subjects the criminal to this heavy judgment, though there be *no blood drawn*.

It is indeed true, that there are not many judgments in support of these constitutions, which is however so far from making against our doctrine, that it really supports it, as it demonstrates that the reverence of the law was so great, and so general, as to afford but very few instances of men profligate enough to draw upon themselves such punishments. Yet we have two very remarkable cases, which clearly shew, that even the greatest subjects durst not adventure to treat the ministers of justice with any degree of contempt, or if they did, it was at their peril, and was far from being slipped over with impunity.

Edward, Prince of Wales, afterwards King *Edward the second*, having, at the instigation of his unworthy favourite *Pierce Gaveston*, given some indecent words to the lord High Treasurer, then a judicial officer

cer, for having rejected a suit, the King his father forbid him his presence and his court for near six months; nor was he restored to favour till he made a satisfactory submission. The other is that famous case of the commitment of *Henry Prince of Wales*, afterwards King *Henry the fifth*, by Sir *William Gascoyne*, the Lord Chief-Justice of *England*. Severe proceedings against meaner men, for inferior offences of the like nature, are to be met with in the law books but very sparingly, as, the severity of those times considered, might be well expected ; but this was far from being the only method by which our monarchs shewed their great deference for and high veneration of the law, as the chief support of the public tranquillity.

The greatest of our Kings, and those most respected at home and abroad, distinguished themselves by their zeal for the laws, believing them to be, as they certainly were, the true bases of their power, and the best support of their authority. By this conduct, *Henry the first* acquired the title of *Leo Justitiae*, or the *Lion of Justice*. King *Edward the first*, after the conquest, has been stiled the *English Justinian*; and tho' he was, beyond controversy, the greatest hero of his time, yet he made the improvement of the

D laws

laws his peculiar study, and the chief sages in them his great favourites, affording all imaginable countenance to their endeavours, to correct the errors that had crept in thro' the infelicity of former times, and to render the proceedings not only easy and perspicuous, but also elegant ; so that barely to represent the benefits which his people reaped from the sagacity and benevolence of that great monarch in this respect only, would require a considerable treatise. In this, as in most other things, he was imitated by his grandson *Edward* the third. *Henry* the Fourth and *Henry* the fifth acted in the like manner ; so did *Edward* the fourth, of the house of *York*, and *Henry* the seventh, of that of *Lancaster*. The very names of these Princes do sufficient honour to the maxims which they pursued, as, on the other hand, the success which attended their endeavours is no small proof that the measures they took were right.

It was under weak and unfortunate Princes, that the laws were beheld with a malignant eye, and attempts made sometimes to violate them, and at others, to corrupt such as were entrusted with the administration, but always with a bad effect.

Thus

Thus that unfortunate Prince, *Richard* the second, for want of skill to govern according to the constitution, would needs bend the constitution to his humour, being either drawn thereto by the counsels of wicked and cunning men, who thought the colour of law would sufficiently defend their proceedings, let them be what they would, or else with hopes of making himself master of the law, by bringing over such as were the *oracles* of it to his side. Yet at the very time this was done, and the judges gave under their hand that to be law which they knew not to be law, Sir *Robert Belknap* said, *that there wanted only a burdle and a halter to finish what he was about*. The King, not content with bending the judges to his will, made Sir *Nicholas Brember* Mayor of *London*, that he might have a minister in the city, capable of seconding his judges; and to shew that he had made a right choice, this Lord Mayor set up a pair of stocks in every ward, and near them an axe was kept, that lesser and greater punishments might not be wanting, if any should offend against the King's will. But the Parliament soon made a great change in this scene; Sir *Robert Tresilian*, Chief-Justice of *England*, suffered death at *Tyburn* for being the ringleader of this mischief; and

Sir Nicholas Brember had his head struck off with one of his own axes. The rest of the judges who had concurred therein were severely punished ; and thus the clouds of oppression being driven away, THE LAW of the LAND shone out again with redoubled splendour.

From what has been said, it appears that every possible method was put in practice by the wisest Princes, and in the happiest times, to which our records and histories bear witness, to give the people the highest notions of the law, to inspire them with the most profound respect for the assemblies whence it derived its origin, and for those who were vested with the high trust of administering it to the people. That even the greatest subjects, and such as were heirs apparent to sovereignty, were not permitted to insult its ministers with impunity, and that when these ministers, neglecting their duty, forgetting their oaths, and violating that trust committed to their charge, attempted to betray and confound the law, they were, tho' servants to the King, punished as *traitors* to the Constitution. These singular acts of favour and countenance from the crown, were abundantly repaid by the law, by the propagating those two celebrated maxims, *that the Crown is*

is always a minor, and that the King can do no wrong ; for, by this means, the royal character was always covered, and the person of the Sovereign secure, so long as the constitution subsisted.

To understand the true ground of this, we must consider that, according to the constitution, the will of the King is made known by his ministers ; the Archbishop of *Canterbury*, and Primate of all *England*, signified it to the clergy in points relating to the church ; the Chancellor, in common acceptation of speech, is the *Keeper* of the King's *Conscience* ; and the Judges make known the *Law* by his authority, and in his name.

These therefore were made accountable, in case of offences. They were supposed to have capacity in every respect equal to their offices, and, as they might lay these down, if they received commands detrimental to the welfare, or contrary to the laws of the land, so whatever they delivered in the King's name, they delivered at their own peril ; and thus, according to the maxims, the minister did the wrong, and nothing was imputed to the throne.

Taking this altogether, it was very consistent ; and the several parts of the constitution acting in their full vigour, the crown and

and the nation were equally safe, and all this from the known meaning and proper operation of the LAW.

Things, however, could not have subsisted for ages in this manner, if the law had not made a suitable provision in respect to the power of its ministers, more especially of the magistrates in great corporations, and of Sheriffs in their respective counties. To these last were entrusted, not only the execution of civil and criminal process, but also the management of the most momentous affairs. The Sheriff returned all the members in his county to Parliament ; the Sheriff signified to the people orders and proclamations upon emergent occasions ; the Sheriff, at the end of every sessions, proclaimed the new laws that were made, and what old ones were repealed ; the Sheriff attended the Judges on their circuits, when they came to administer justice ; the Sheriff stifled all sedition and commotion excited in his county, and secured such as raised them, till they could be brought to justice. These, and many others, were branches of his ministerial office, in which he acted as the great minister of the law, as the guardian of the public safety, and for the benefit of the commonwealth. It was an office of great honour, great trust, and

great authority, but withal, an office of great trouble, and no small expence, and in which, if a man was either guilty of neglect or misdemeanour, he was liable to severe and to immediate punishment. It was therefore requisite, that he should have legal power adequate to so great a charge, and he had as great as could possibly be given him, that is, he might, when occasion required, raise the *Posse Comitatus*, or power of his county; in other words, he might call to his assistance every man between fifteen and fifty; in which there was no hardship, since he could do this only in virtue of the King's writ; or other lawful authority, for the public benefit. The same thing, in a more restrained sense, conformable to the nature of their offices, might be said of the other ministers of justice; for the law required no impossibilities, nor commanded any man to act, but in proportion to the powers he assigned him, and these therefore it became his duty to exert.

But, to avoid prolixity, we will state, as succinctly as may be, some very particular and extraordinary cases; for if it shall appear, that in these the ministers of the law were able to act with effect, it must be concluded, that in common and ordinary occurrences, they could never be at a loss for a sufficient force

force to support them in doing whatever it was their duty to do, nor is there any intimation that they were at a loss for them.

In the beginning of the reign of *Richard the second*, *Anno Domini 1381*, there was a violent commotion in different parts of the kingdom, and the meanest part of the people under leaders, who had no other title to power than their madness and ill use of it, assembled in multitudes, cut off the head of the Archbishop of *Canterbury*, the Lord High Treasurer, murdered other persons of distinction, and aimed at nothing less than the subversion of the constitution. At the head of a prodigious body of these boisterous malecontents, *Wat Tyler* came to *London*, forced the young King to attend him, and, amongst other wise articles, prescribed this, that he and his company might be at liberty to put to death all the lawyers in *England*, with other demands of a like nature. The then Mayor of *London*, *William Walworth*, repairing to the King's presence, those who were about the young Prince, advised him to command the Lord Mayor to arrest the insolent traitor, which he did, and, upon resistance, stabbed him with his dagger; for which cause, it is commonly reported, the dagger was added to the arms of the city. Whatever

ever truth there is in this fact, all our historians agree, that the Mayor, and the citizens raised by his authority, put an end to this formidable rebellion ; and afterwards sat in judgment, by virtue of the King's commission, and, by due course of law, put the chiefs of this most dangerous sedition to death.

The Sheriffs of the northern counties, in several reigns, raised a force sufficient to repel the *Scots* when they invaded *England*; and the Sheriffs of the maritime counties found it no difficult thing, more especially so long as the fishery flourished, to defend their coasts against the *French*, and to defeat them so often as they attempted to land, without their being ever able to make any considerable impression, or to commit any great devastations, which at this time of day must appear very wonderful, considering the despicable opinion we have of men hastily raised, and indifferently armed. But at that season, when the people were entrusted with their own defence, and knew that they fought for themselves, and against their antient and implacable enemies, they wanted not either courage or abilities, which being frequently exercised, made them the more ready, upon such occasions ; to which perhaps it did not a little

contribute, that they knew the persons who commanded them, and were well assured, that they should be kept no longer together than necessity required, and that when their enemies were subdued or repulsed, they should return to their ordinary labours, and, after the fatigues of war, enjoy that repose for which they fought.

In the reign of Queen *Elizabeth*, the popular Earl of *Essex*, who was generally beloved, and more especially by the citizens of *London*, ventured on an insurrection, and actually entered the city with a great number of lords and gentlemen in arms.

But the Lord Mayor and Sheriffs did their duty, raised the citizens, and obliged that unfortunate nobleman to retire back again to his own house in the *Strand*. This certainly is a very strong proof of what the civil magistrate was able to do, even in a very perilous and extraordinary conjuncture, by dint only of the legal powers with which he was constantly vested.

It may indeed be said, that things are much changed since then, but if the nature of this change be strictly considered, it will appear, that this is far from being a sufficient answer, since it would be equally difficult for any nobleman to form such an enterprize now,

as for the citizens by their own force to suppress it. The true distinction to be made, is between the alacrity and spirit of the people then and now, their willingness to take up arms at the command of the magistrate, and their readiness to hazard their persons on the score of fidelity to the government, which flowing from an opinion of their interest therein, will be at all times proportionable to the strength of that opinion.

In the reign of *James the first*, the popish gentleman concerned in that detestable treason, known by the name of the Powder-plot, fled into the country, and would quickly have raised a considerable body of men, if they had not been pursued by the Sheriffs of *Warwickshire*, *Worcestershire*, and *Staffordshire*, who gave them no leisure or respite. Yet they did not tamely surrender, but made a bold, even desperate defence; notwithstanding which, they were killed or taken to a man, and brought to that punishment which their crimes deserved.

Thus this insurrection was quelled by the Sheriffs, with the natural force of their counties, before it had time to swell into a rebellion, and is certainly a noble instance of the courage of the *English* nation, and their duty

to the laws, since this was their only motive.

If we consult the celebrated Mr. *Locke*, we shall find that after the civil war was begun, and great armies formed on both sides, the famous Earl of *Shaftsbury*, then Sir *Anthony Ashley Cooper*, a very young man, and not much esteemed at *Oxford*, embarked in a bold design of putting an end to that war, and obliging both parties to lay aside arms, and submit their disputes to the decision of the law, upon this very principle which we have been labouring to establish. This design, with much ado, he was permitted to communicate to King *Charles the first*, who, tho' he heard it with some prejudice, as well on account of the strangeness of the thing, as of the youth of the person who proposed it; yet he seems to have been convinced by the reasons which Sir *Anthony* gave, for otherwise he would not certainly have approved it. As the matter is very curious, you will not perhaps be displeased to see it in the author's own words.

" At his audience he told the King, that
 " he thought he could put an end to the
 " war, if his Majesty pleased, and would
 " assist him in it. The King answered, that
 " he was a very young man for so great an
 " undertaking. Sir, replied he, that will
 " not

" not be the worse for your affairs, provided
 " I do the business. Whereupon the King
 " shewing a willingness to hear him, he dis-
 " coursed to him to this purpose. The gen-
 " tlemen, and men of estates, who first en-
 " gaged in that war, seeing now after a year
 " or two, that it seems to be no nearer the
 " end than it was at first, and beginning to
 " be weary of it, I am very well satisfied
 " would be glad to be in quiet at home again,
 " if they could be assured of a redress of
 " their grievances, and have their rights and
 " liberties secured to them. This, I am sa-
 " tisfied, is the present temper generally
 " thro' all *England*, and particularly in those
 " parts where my estate and concerns lie; if
 " therefore your Majesty will empower me
 " to treat with the Parliament garrisons, to
 " grant them full and general pardon, with
 " an assurance that a general amnesty (arms
 " being laid down on both sides) should re-
 " instate all things in the same posture they
 " were before the war, and then a free Par-
 " liament should do what more remained to
 " be done for the settlement of the nation.
 " He added further,

" That he would begin and try the experi-
 " ment first in his own country, and doubted
 " not but the good success he should have

" there,

" there, would open him the gates of other
 " adjoining garrisons, bringing them the
 " news of peace, of security in laying down
 " their arms. Being furnished with full
 " power, according to his desire, away he
 " goes to *Dorsetshire*, where he managed a
 " treaty with the garrisons of *Pool*, *Weymouth*,
 " *Dorchester*, and others, and was so success-
 " ful in it, that one of them was actually
 " put into his hands, as the others were to
 " have been some few days after. But
 " Prince *Maurice*, who commanded some of
 " the King's forces, being with his army
 " then in those parts, no sooner heard that
 " the town was surrendered, but he presently
 " marched into it, and gave the pillage of it
 " to his soldiers. This Sir *Antony* saw with
 " the utmost displeasure, and could not for-
 " bear to express his resentments to the Prince;
 " so that there passed some pretty hot words
 " between them; but the violence was com-
 " mitted, and thereby his design broken; all
 " that he could do, was, that he sent to the
 " other garrisons he was in treaty with, to
 " stand upon their guard, for that he could
 " not secure his articles to them; and so this
 " design proved abortive, and died in
 " silence."

This

This piece of history is the more considerable, as it shews the sentiments of so wise and able a man, as the Earl of *Shaftsbury* certainly was, and one perfectly acquainted with the old *English* constitution, on several points of great importance ; and put it out of dispute, that he had the very same idea, that from the foregoing arguments has been explained and supported, in reference to the great power of the civil magistrate, and the universal inclination of the people to maintain it, when legally exerted, and for just purposes. But it may be said, that all I have hitherto insisted upon may be presently overthrown and demonstrated no better than a patch-work carpet of plausible passages of history, which, after all, prove nothing, because they are directly contradicted by the whole current of our history, since, if my hypothesis were true, this kingdom must in former times have been, at least, as rich and flourishing, and the people much more happy and quiet than in our times ; whereas the very contrary of this being indisputably true, and there being nothing but conspiracies, civil wars, and bloodshed, for the first four hundred years after the conquest, this high veneration for the law, this adequate power in its ministers, and these glorious effects produced

by both, are but the visions of a disturbed mind, which seeks to vent its dislike to present times, by making a feigned and false representation of the past.

I think it will not be denied, that I have placed this objection in the strongest light possible, and cloathed it, as near as may be, in the language of those, who having picked up from modern *English* history a very superficial notion of what passed in the days of our ancestors, take occasion from thence to insult those who have studied these points with more care, and have spared no pains to go to the bottom of things; when therefore I shall lawfully have answered this objection, and set the matter now under consideration once more in its true light, I presume that I shall have done some service to the cause of real and practicable liberty, to that of the constitution, and consequently to that of our country, which every honest man will have always more at heart than either his own private opinions, or his interests.

In order to do this effectually, I must come to the fourth point that I undertook to discuss, which is that of a military power; a thing that a nation cannot be without, and which, notwithstanding, has been in reality the source of most of the mischiefs this nation has suffered

suffered, and the true cause of the greatest dangers to which our constitution, laws and liberties, or, to comprise them all in a single word, *our happiness* has been exposed. This matter once well understood, all that has been advanced will appear equally reasonable and certain, and we shall be no longer at a loss as to the object of our choice of the civil or military aid, for the support of our government, and the due execution of the laws, the excellence of which may be admired, but never can be felt, unless they are executed with vigour, as well as contrived with prudence.

In the *Saxon* times, the people and the army were the same ; that is to say, the same persons who in time of peace might be called together, and were bound to assist the Sheriff, were also to take up arms when that became necessary ; and for the very same reason that the peace-officer was left to the choice of the people, so the power of commanding, or of conferring command, was also left in their breasts. But after they had chosen their captain, or leader, stiled in their language **HETTOCH**, they took an oath of obedience to him, and served faithfully till the war was at an end, to the expence and dangers of which, as they were exposed, they could have no

interest to protract. It is therefore very obvious, that the state ran no hazard, or, at least, as little as might be, from this military power, since, in effect, the soldiers could oppress no body but themselves, or their own families, their armies being composed of young men, while those who were old, infirm, or otherwise unfit for the service, and a proportion of the young men also, remained at home, and carried on their business under the protection of their brethren in the field. But, after the conquest, things were in this respect entirely altered; the *Normans*, who had been the companions of their duke, and who had assisted in subduing this country, thought they had as good a title as he to reap the fruits of their victories; and as the conqueror's power was no otherwise to be maintained than it had been acquired, it was his interest to acquiesce in their demands. Thus the *Normans* were rewarded with lands; and as the Duke became King in virtue of a military power, they became lords by military tenures. Hence it is plain, that a very extraordinary change was wrought in this necessary but dangerous part of our settlement. It is true, that by their tenures the Barons were to raise forces for the service of the Crown; but it is no less true, that, having

the military force in their hands, they frequently made bold to raise it for themselves against the Crown. To this, and to this only, the civil wars are to be referred that so grievously disturbed this nation, more especially after the death of King *Richard* the first, when many of the nobility had acquired prodigious acceffions of power, by purchases from the Crown, when the King sold almost every thing that he had to sell, to enable him to make an expedition into the Holy Land, with that lustre and power naturally affected by the most ambitious and martial Prince of his age.

The contests between King *John* and his Barons are generally said to be for liberty, but they were in truth rather for power. The King would have it ; the Barons would also have it ; and as they could not both have it, or agree which should, they fought for it, and the sword having decided in favour of the Barons, the King was obliged to grant them the *Great Charter*, which comprehended both new privileges and old, the former being granted, and the latter confirmed. Those were in favour of the Barons, these of the people ; but it is very easy to conceive, that all being wrested from the Crown by the Barons, they took the best care they could of

themselves, and omitted nothing to strengthen their own power, which was but too great before.

It must however be confess'd, that in the issue of this contest, the people got something ; the consequence of which, however, it is very probable, was not clearly comprehended either by the Crown, or by the Barons. That *something* was the establishment of their representatives in Parliament, which made way, by degrees, for *real liberty*; that is, for the extending the benefit of the laws to the whole nation. But before this could be done, the state underwent many dreadful confusions, sometimes through the rage and despair of the lowest of the people, who, not knowing where to fix the blame, imputed those tenures to the law, which the law only tolerated, and could not remove; sometimes by the error of Princes, who seeing themselves distressed by the military power of the Barons, set themselves at the head of a faction, or as *Richard* the second did, took mercenaries into their pay, and, by putting a force upon Parliaments, obtained the colour of law for actions inconsistent with justice.

But still, the principal ground of our calamities was this military power of the Barons, who under various pretences sacrificed the peace

peace of the nation, and the very being of the constitution, to their humours sometimes, but often to their interests. *Henry* the fourth they advanced to the Crown, and in the space of a year, probably because their expectations were not answered, those who had made him a King took up arms to dethrone him. *Henry* the fifth kept things quiet at home, by employing his Barons in the wars with *France*, but in the time of his unhappy son, they fully discovered the excess of their own power, and the impossibility that this country could be happy while they retained it. He was sometimes their Prince, sometimes their prisoner; one Parliament supported his title, and the next destroyed it; and all this through the military power of the Lords; nay, at length, through the cunning and credit of * *one Lord*, who, as he changed sides, made the title of *York* or *Lancaster* preponderate, and from thence assumed the title of *Make King*.

We shall the less wonder at this, when we consider what an author of great authority affirms, that most of these Peers had armouries in their houses, out of which many could arm *one*, and some *three* or *four* thousand men; that an Earl could bring a thousand, and many Barons five or six hundred

barbed

* Earl of *Warwick*.

barbed horse into the field ; and, by dint of interest, alliances, or descent, there were sometimes three or four Earldoms in the same person. While things therefore were in this situation, we may very easily account for troubles, distractions, and civil wars, without laying the fault upon the law ; but for which, there would have been nothing else : Neither is there a single instance to be met with of the abuse or perversion of law, but what was brought about by the application of this military force.

At length *Henry* the seventh, who perfectly understood both the cause and its effects, provided silently the means of rescuing himself, his successors, and his subjects, from this tyranny. His scheme was so vigorously prosecuted by his son and successor *Henry* the eighth, who under various pretences, and sometimes almost without any pretence at all, cut off or humbled the old nobility, employed chiefly new men, whom he raised to titles without power, and distributed property into so many hands, that by the end of his reign, the *English* aristocracy was in a manner overturned. In the minority of *Edward* the sixth there were new factions, but they were the factions of new men, who had recourse to mercenary forces, and some foreign-
ers,

ers, and yet had the boldness to think of changing the succession, as not at all knowing the nature of their own power, but believing, that with the titles of the old Peers, they were invested likewise with their authority.

At least this was the notion of *Northumberland*, who at the head of a small body of such motly troops, thought to set his daughter-in-law upon the throne. But the power of the law then appeared, and the Sheriffs in two or three counties obeying Queen *Mary's* letters, his forces abandoned their leader, and he lost his point and his head. If that Princess had lived long, it is not impossible that the nobility would have recovered their power; but happily for the church and state of *England*, she died in a very few years, and left the Crown to Queen *Elizabeth*, who in the course of a long and prosperous reign, settled the constitution upon a new and a right foot, by which all danger from the military power was taken away, and yet the use of it preserved whenever it should be necessary; so that by her wise and well weighed administration her subjects gained much, and lost nothing.

The truth of this appeared manifestly, as we have before observed in the reign of her successor,

cessor, who notwithstanding there were many enemies to his family and title, came to the throne, and sat thereon many years, tho' his councils were not either wise or steady, with only one insurrection, which has been already mentioned, and was suppressed by the civil magistrates so speedily, and so effectually, that as he did not need, so he does not seem to have desired, any other power for his support. In the succeeding reign of *Charles* the first, it has been said, that if he had had ever so small a military force, there had been no war, notwithstanding the nation was so highly provoked. You have seen the project of an able man for suppressing that war, after it broke out, which not taking effect, things went on till the Parliament became compleat victors, and after having assumed the executive as well as legislative power, and, in consequence of having a military force at their disposition, ridded themselves of the nobility as well as monarchy; after which they ventured upon a foreign war, in support of the interests of the nation, and from motives as plausible and popular as it was possible to devise.

But what followed then? A military force which themselves had raised, paid, new modelled, and in which they disposed of all

com-

commands, seeing plainly that they had given them the power to do all that they had done, undid it at once, and raised their General to supreme power, which he exercised in a manner before unknown to this island, and much beyond what had ever been affected by the most ambitious and absolute of our Kings. Thus we have run through concisely the rise, progress, and revolutions of military power, from the conquest to the restoration, which was the consequence of a new revolt, and another great effect of military power. And here it is time for us to stop, since what has been already said will make it sufficiently evident, that a military force may easily disturb, may also without much difficulty overturn the best constitution in the world, and therefore ought certainly to be trusted no farther than is absolutely necessary, and requires even then to be managed with infinite caution, to prevent its recoiling upon those who should be its masters. Our regular troops may be, and doubtless are, as good as any in the world ; they have served and saved the nation at home and abroad ; they have contributed to our honour and our happiness. May they long continue to do so. But let this never be made use of as a reason to put the civil power into their hands, by making use of them to

support and maintain the laws, which it is very certain may be vigorously and effectually put in execution without them. This brings me to the last point, which is an instance of the truth of this assertion, and which, if I am not much mistaken, may be so fully and clearly made out, as not to leave you under the least scruple or perplexity about it.

The highest severity known to our law, is that of punishing even the greatest offences by one of the gentlest kinds of death.

But still, as it is death, and as the loss of being is the utmost penalty that man can inflict, it seems as if the heinousness of the offence was described in depriving the offender of life, and at the same time the moderation of the law, demonstrated by the manner in which he is deprived of it. But if the merciful spirit of our laws spares even the boldest and blackest invader of them from those terrifying circumstances that attend even capital punishments in other countries, and in comparison of which plain death is looked upon as a favour, surely some care should be taken to heighten the solemnity of this spectacle, in such a manner as may render it adequate to the purpose proposed from it; otherwise the lives of these men seem to be thrown away, and notwithstanding all the wise precautions

cautions of the law for preventing any subject of this kingdom from falling into this unhappy state through any thing but his own guilt, there would appear, in this last and most interesting scene to the public, no proper method invented to make these examples a warning to others, or to prevent their becoming what the sentence disclaims as fatal to the soul, as to the body of the unhappy sufferer.

This is very far from being the case in any other nation in *Europe*, all degree of ceremony, all shew of authority, does not end with the trial, but the contrary; there is great care taken of, and great attention shewn to the criminal after condemnation, not for his own sake, that perhaps he may not merit, but out of respect to the public, to whom he in some measure belongs, that the sacrifice of his life may not only make an atonement for his fault, whatever it is, but contribute to the future safety of society, by deterring others from committing the like. Indeed these seem to be the only reasons for public executions, which if they do not inspire both pity and terror, and make not a visible impression on the minds of the spectators, are not only useless, but dangerous, as they accustom the populace to look on violent deaths

with indifference, and instead of rendering the punishment terrible, insensibly render it familiar ; and which will be incredible elsewhere, and would have been so even here but thirty years ago, a sort of a diversion. It is from a just sense of this, that, in the neighbouring country of *Scotland*, criminals under sentence of death are carried under a proper guard to hear divine service in a church adjoining to the prison ; are visited by the most eminent among the clergy ; are secluded from the noise and company of other prisoners ; are examined before they are carried to execution, before the magistrates ; who are likewise present when they suffer ; are ready to hear any thing they have a mind to say ; to grant them any favour that is reasonable, and to prevent any sort of indulgence which is not so. The same customs very nearly are in use in *France* and in *Holland* ; and there is nothing more notorious, than that, by the help of these precautions, capital punishments are rendered very awful and affecting, the consequence of which is, that they are but rare, more especially in the first-mentioned country, where they do not hang more in a year through the whole realm, than are sometimes executed here after one sessions.

Yet

Yet this difference between us and other nations, for which we have been severely censured by foreign writers, is of no long standing, as has been hinted above, but a direct and very unjustifiable departure from the customs of our ancestors. It appears from our history, that in the beginning of the reign of *Edward the third*, the mayor of *London* was ordered by the King to attend at the execution of the archtraitor *Mortimer*. In the works of the famous antiquary Mr. *Strype* there are several private letters preserved from Sir *William Fleetwood*, then recorder of *London*, to the Lord Treasurer *Burleigh* in Queen *Elizabeth's* time, from which it appears, that great minister expected to be acquainted with whatever was done of moment at every sessions of the *Old Baily*. There is an account of the death of the Earl of *Essex*, which shews, that tho' it was private at his own request, the proper magistrates, that is, the Sheriffs, were not only present, but several persons of high distinction. The same thing appears in the succeeding reign, at the death of Sir *Walter Raleigh*. But what is more to the purpose, when *Franklyn* was executed for poisoning Sir *Thomas Overbury*, tho' the criminal was but a very mean person, the Sheriff attended, and two or three gentlemen of distinction

distinction were questioned in a high court of justice for their behaviour at that execution, in endeavouring to draw from the criminal expressions derogatory to the justice of his sentence; and the charge brought by the famous Lord *Bacon* against these gentlemen, is still extant in his works. Other instances much lower in point of time, if it was necessary, might be produced; but it will not contribute more to the design of this paper, to shew the nature of the abuses which mostly in our times have crept in on such occasions, and the just and effectual remedy provided from the public spirit and firmness of a late Sheriff; because this will shew that there is nothing wanting to restore that reverence and respect to the law, which is the very life of our constitution, but magistrates doing this duty in their respective stations, with that vigour, diligence, and zeal, which their respective offices require, which never will fail to be seconded by the good behaviour and obedience of the people, who, as they are very easily corrupted by bad, may without much difficulty be reformed by good examples. A maxim which at this time deserves to be particularly inculcated, since there never was a juncture when the evil effects of the former were

were more felt, or the happy consequence of the latter more to be desired.

To trace this matter from the beginning. The Recorder of *London* having made his report to the King, which alone is a convincing proof of the regard which the law pays to matters of this nature, since none are executed by the sentence of the law in or near this capital, without the King, or, in his absence, the Lords Justices, being made acquainted with their cases, that in the midst of justice there may be a remembrance of mercy ; the Recorder signifies by his warrant under his hand and seal to the Sheriffs, and to the keeper of *Newgate*, who are appointed to die, and on what day the execution is to be done. In consequence of this warrant, the keeper of *Newgate* delivers the criminals to the Sheriffs, who from that moment become accountable to the public for the due execution of what the law requires. Yet for many years past the Sheriffs have seldom attended upon such occasions, but left this disagreeable business to their Under-Sheriffs. But by degrees, as was very natural, the Under-Sheriffs likewise declined this trouble, which by a progressive spirit of indolence and neglect of duty, tempted the High-Constables to venture at being absent also ; and the same liberty

being

being likewise taken by many of the Sheriffs officers in *London* and *Middlesex*, the whole conduct of a matter of this importance to the public (for so it certainly is if the laws be of any importance) was left to a few inferior officers and Petty Constables who were obliged to attend, and perhaps thought it a hardship too that they were tied to this attendance.

The mischievous tendency of these neglects might have been more easily foreseen than they can be described. In the first place, a rude disorderly mob, composed of the worst sort of rabble, many perhaps as guilty as those that were to suffer, assembled without the gaol, and many got in, by which vast confusion and most unnecessary tumults were occasioned; as irregular proceedings always beget delay, so this delay produced a most horrid consequence, that of intoxicating most of the mob, and which was still worse, the criminals themselves with gin and other spirituous liquors. By this means those who were to suffer, instead of expressing penitence for their crimes, abhorrence for their past lives, a due concern at the approach of a violent and shameful death, a just resignation to the sentence of the law, and in fine, a proper behaviour on such a melancholy occasion, appeared either stupidly insensible, or impudently

dently hardened, which the drunken, brutal, wrong-headed multitude about them either interpreted as signs of innocence, or applauded as marks of courage. So that from their first setting out, there was a fine appearance of answering what the law intended, imprinting awe and terror, and a just concern for the misery of men launching into eternity, in consequence of a sentence pronounced for the safety and security of society.

The progress from Newgate to Tyburn was exactly of a piece with this scandalous beginning ; tumult, confusion, outcries, oaths, imprecations, ludicrous and even lewd expressions, filled the streets, and stunned the miserable criminals, so as to render it almost impossible for them to employ their last moments in testifying sorrow for their offences, or in imploring the mercy of an offended God. Nay, to increase this disorder, they were suffered to stop twice or thrice by the way, to receive new comforts from strong liquors, to prevent the recovery of their senses, upon which their salvation perhaps depended, before they arrived at the fatal place where they were to lose them, at least in respect to this world, for ever.

At the very place of execution, things went rather worse than better; the mob grew

more clamorous, more unruly, and more audacious, having drowned their faculties, and increased their fury by repeated doses of Gin in their passage. Amidst such a scene as this, and in the condition before described, what spectacles must the criminals be? What benefit was the public like to reap from their dying testimonies? How was the wish of the Recorder, at passing sentence, *that God would have mercy upon their souls*, like to take place, when many of them died dead drunk? What terror was such an end like to make upon the hardened hair-brained spectators? What a strange issue is this of that solemnity which the law requires, and which has been hitherto preserved in trials, and which, with equal reason, the law must be supposed to expect, when its severest sentences come to be executed.

But still this is not all; the distracted drunken crowd were at the heels of the criminals, as soon as they were turned off, and instead of expressing the least concern at so dreadful a sight, skirmishes immediately began about the disposition of the bodies, before the poor creatures were dead, in which many heads, and sometimes legs and arms, were broke; the few Petty-Constables and Sheriffs officers that attended, having not sufficient

power to repress these disorders. At length the corps, being stripped by the executioner, was carried off by one mob or the other, for the use of the surgeons on one side, or to be interred by friends, if their party prevailed, on the other ; some, indeed, were so miserable, as to have no mob either for or against them, and these, their dead bodies (it is horrible, but it is true) lay, to the dishonour of the laws, and the disgrace of human nature, absolutely naked under the place of their punishment, till some charitable Christian paid, or till the inhabitants, to be rid of the stench, caused a hole to be dug for their interment, without any interposition of authority in either case.

After this sad recital, it must appear very wonderful, that no attempt was ever made to rescue any of the prisoners, than which, in such circumstances, nothing certainly could have been more easy. It was to prevent this, and under pretence of aiding the civil magistrate, that applications were made for a military force ; but, as you plainly see, this was only to supply the want of proper officers, and to cover the negligence that occasioned that want. Had it not been for that negligence, such assistance would have been altogether unnecessary ; as it was, it must have proved

equally ineffectual and improper. For who was there that either had authority, or would have assumed it, to order the soldiers to fire? What, in such a case, would have been said for the absence of the Sheriffs, and even Under-Sheriffs? What might the consequences have been, where the crowd was so great, that the soldiers were pressed and pinned up; and where the mob, usually armed with bludgeons and cutlasses, might have taken advantage of that condition, and have knocked them down before they could fire? To what dangers must the inhabitants and accidental passengers have been exposed?— Let us however drop this subject; we have said enough to shew, that this was by no means a fit remedy, and that was all that was intended. We will now speak of what is the true remedy, when applied, and how it operated.

When the worthy Alderman *Janßen* came to be Sheriff, whose modesty may perhaps suffer from that praise which he has as little sought, as he was studious to deserve; when that gentleman, I say, came to execute this important office, he considered the obligation he was under to execute it in a manner suitable to its dignity, and consequence to the public. He could not but know what trouble

ble and pains this would cost him ; he could not but foresee the difficulties with which it would be attended ; and it is very probable that he might apprehend, that however right, however proper, however necessary his conduct might be, those who delight in finding fault, would not be silent in respect to him. But however, as he had been called to that trust by his fellow-citizens, and as he had undertaken to execute it, he determined to fulfil his engagements, which he did with great punctuality and firmness, and with all the regularity and good success imaginable ; which is the sole reason of his being mentioned upon this occasion. The first execution during his Shrievalty was attended with some remarkable circumstances.

There were fifteen criminals to suffer, some of whom were justly looked upon as desperate villains ; and one there was (*Penlez*) whose case had attracted, in a very singular degree, the compassion of the populace. If therefore a rescue was ever to be feared, it was to be apprehended at such a conjuncture. But what did the Sheriff do upon this occasion ?

He attended in person ; he required the assistance due to his office ; and his example, in a great degree, procured it.

He

A military force attended at *Holborn Bars*, without his requiring it. He very politely thanked the officer who commanded them, but declined his assistance, as having those for his guards whom the law had appointed, and who were, from that appointment, consequently under the protection of the law. Thus he proceeded with the criminals thro' a crowd unusually great, even upon such an occasion; but through the effects of his precautions, with less disorder, and with none of those indecencies common in such cases. At the place of execution, the multitude was vastly increased, and some thousands of sailors appeared armed with bludgeons and cutlasses. The Officers and Constables, more in number, and in better order, and better armed than had been seen for many years, surrounded the gallows. The Sheriff then spoke to the mob, told them, that when the law was performed, they should have what bodies they required; and partly by fair means, and partly by threatening to read the proclamation against riots, prevented any violence, saw the execution done with as little disorder as possible, and, by compliance with his promise, had the pleasure of seeing this tumultuous assembly disperse without any of

the usual ill consequences of frays and fighting.

He attended in like manner upon every other execution, while in office, except one, when he was dangerously ill, and then the Under-Sheriffs were present.

Every one of these executions was more decent than the former, in consequence of the lights he obtained as to the legal power of his office, and the use he made of them. He summoned the High-Constables of the five divisions of *Westminster*, *Holborn*, *Kensington*, *Finsbury*, and the *Tower Hamlets*, with their Petty-Constables, who formed all together a body of between two and three hundred foot and horse. He had besides, the Officers from the two compters in *London*, and the Officers of the Sheriff of *Middlesex* to their full compliment, well mounted and armed with javelins, or with their swords drawn. These guarded the carts regularly from *Newgate* to *Tyburn*, and when they came to the gallows, formed a large circle, the outline composed of horse, and the Petty-Constables forming a circle within. The mob, at the second execution, being told that offensive weapons were unwarrantable, and that they were liable to be imprisoned for appearing with them upon such an occasion, in defiance of the laws,

some

some delivered them up to the Officers, others threw them away, and at the succeeding executions, the populace appeared without any. In a word, their behaviour grew every time more decent ; there was no fighting for bodies, but when the execution was over, they were delivered to their friends, and proper care taken of those who had no friends. This shews how easily, where magistrates and ministers of justice will set the example, those evils, that are treated as intolerable and incorrigible, may be repressed ; and that the old spirit of respect and obedience to the laws may be revived, by persons in power doing that duty, which those laws require from them, without having recourse to any extraordinary or violent methods, which, instead of quieting the populace, would rather exasperate them.

The whole of this gentleman's care however was not confined to the bare conducting of the prisoners to death, he procured likewise proper regulations in other respects. An old law of Common-Council was revived, by which the keeper of *Newgate* was enjoined, under penalty of losing his place, not to suffer prisoners under sentence of death to receive any other than the prison allowance, under colour of support, unless in cases of

appa-

apparent necessity, that they might be in a condition to employ that time which is given them to its proper use, and labour in this interval to secure themselves against the greatest of all dangers, that of passing from a momentary and temporal, to an infinite and eternal punishment.

Upon the same principle of yielding an exact obedience to the laws, coaches were denied to all, tho' this was a favour that had been formerly frequently granted, and was understood to be in the Sheriff's power. But where the crimes are equal, and where the law makes no distinction in the sentence, it seems but prudent to make none in the manner of executing that sentence. The great ignominy of this death, is being shewn as a criminal to the people, and in this sense the criminals are considered as public examples; and that this is the true language of the law, appears from the judgment in petty and in high-treason, when being placed upon a hurdle, in order to the criminals being more exposed, is a part of that sentence. Add to all this, that whatever contributes to make executions answer their true end, of raising terror to such a degree, as to deter future offences, is so far from being severity, that it is mercy. But whatever it be, it is the Sheriff's

riff's duty, and he ought to act in pursuance of his warrant.

After insisting so long, Sir, upon a great variety of subjects, some of them none of the most agreeable, it would be tedious at least, if not impertinent, to detain you with observations, reflections, and remarks, upon what has been said, give me leave therefore to conclude with a few plain and, I hope, useful inferences.

In the first place, it is generally allowed, that our laws are just, merciful, and perfectly agreeable to the genius of this nation ; which has always entitled them to the reverence, love, and duty of the people ; and therefore there is no need of altering, increasing, or making them more severe : yet, in respect to criminal cases, perhaps it might be expedient to reduce all the laws now in force into a regular, succinct, and perspicuous system, that both the magistrates and the subjects of this kingdom might more fully and perfectly comprehend them ; a thing not only very reasonable in itself, but which must be certainly attended with very many and great advantages.

In the next place, the utmost care should be taken that the authority, power, and legal privileges, of every court, of magistrates

of all ranks, and of the ministers of justice of every kind, should be maintained and supported by the care of the legislature, and without respect of persons ; and that all stops, delays, and unnecessary expences should be taken away, that the subject may have all possible encouragement to seek justice, and be under no temptation to compromise or compound offences, which is at once an insult on the laws, and the highest injury to society, as it tends to encourage wickedness, by a tacit promise of impunity.

Lastly, there seems to be the utmost necessity of the government keeping a strict eye over inferior magistrates, and such as act under them, for upon their doing their duty in a vigorous, disinterested, and upright manner, the security, tranquillity, and prosperity of this nation must ever depend. If idleness, drunkenness, gaming, lewdness, and immorality, could be suppressed, (which might be done by the laws now in force, if duly and steadily executed) those greater crimes, which make so terrifying an appearance, excite such a general clamour, and cause such frequent and numerous executions, would very quickly cease. The shortest and the safest way of preventing great crimes, is to punish small ones severely ; and if the stocks, the whipping,

ping-post, and houses of correction, were properly employed, the gallows might stand in a good measure unmolested. But if nothing is considered, or punished as a crime, that does not come up to hanging, we need not at all wonder, that such as once enter into the profligate road, continue in it till they meet with that punishment.

These considerations, together with the foregoing facts, are submitted to your judgment, in hopes they will induce you to contribute to whatever may restore the reverence due to the laws of *Great Britain*, their judges and ministers, and prevent your being drawn to think any other method expedient for this country, how plausibly soever it may be introduced; since the reviving the civil discipline is all that is wanting, and the sufficiency of the laws would abundantly appear, if their execution was but sufficiently attended to.

I am, SIR,

Yours, &c,

PHILONOMOS,

A P P E N D I X.

IT may perhaps contribute not a little to your satisfaction, and justify at the same time the liberty I have taken, if I join to this letter the thoughts at large of as competent a judge as perhaps this nation ever produced upon this very important subject. The person I mean is Sir *Thomas More*, the son of a judge of the King's Bench, himself regularly educated in the law, and advanced on the score of his merit, and great integrity, both of which were universally acknowledged, to the great office of Lord High Chancellor of *England*.

What I have said might be perhaps sufficient, but as I lay much more stress upon his capacity than upon either his dignity or general reputation, so I think it may not be amiss to offer some farther reasons, why I consider him as a person who was able to form the best opinion upon this matter. He was not only perfectly versed in our laws, but he rose by such slow degrees, passed through such a variety of offices, and had such singular opportunities of knowing the state of this nation, in almost all its branches, that I am

sincerely inclin'd to think, it would be very difficult, if not altogether impossible, to find a man more fitly qualified than he was, to discuss a point of this nature, more especially if we consider, that with these many occasions of thinking justly, he was likewise blessed with an extraordinary talent of delivering freely and sincerely what he thought.

He was a citizen of *London*, and Judge of the Sheriff's court, he was a Member of Parliament in the reign of *Henry the seventh*, and so true a patriot, that he ventured to oppose the king's measures in the House of Commons with so much zeal and success; that, to avoid the resentment of that severe monarch, he was on the point of quitting his country, if the king's death had not intervened, by which he was delivered from his fears. He did not however change his sentiments; on the contrary, he has set in the truest, that is, in the worst light possible, the measures pursued in that reign; and had the courage to publish this representation, under that of his son, who was so far from resenting it, that he honoured Mr. *More* with his personal friendship, and conferred on him many marks of royal favour.

He made him one of his Masters of Requests, knighted him, caused him to be sworn

sworn of his Privy Council, advanced him to the post of Treasurer of the Exchequer, consented to his being elected Speaker of the House of Commons, at the recommendation of Cardinal *Wolsey*, wherein he served the King and his Minister well, but his country better. After this he became Chancellor of the Duchy of *Lancaster*, was employed in an embassy to the emperor, in another to the French King ; and having in all these given the highest proofs of wisdom and courage, the great seal, when taken from Cardinal *Wolsey*, was put into his hands ; and the post of Chancellor was never discharged with greater diligence, for he once adjourned a seal because there remained no causes to be heard ; or with greater integrity, for when he lost the King's favour, his conduct was not only closely but vigorously examined, and the most frivolous complaints encouraged, which however ended so much to his honour, that the King could not help regretting the loss of so good a minister.

The book from which this discourse is taken, is intitled his *UTOPIA*, written in elegant *Latin*, and printed at *Basil* in *Switzerland* in 1518. His design in this memorable book, was to represent freely what he took to be the greatest errors in government, and

to exhibit an idea of a perfect State ; which was so well relished by the learned and judicious part of mankind, that it has been often reprinted in that language, translated into the *Italian* and *French*, and no less than five times rendered into *English*. In this most ingenious treatise, which is penned after the manner of the antients, in the way of conversation ; the chief speaker is *Raphael Hythloday*, who is introduced giving an account of what he heard at the table of that reverend prelate Dr. *John Morton*, Archbishop of *Canterbury*, Cardinal and High Chancellor of *England*. This great minister was our author's first patron, by whom he was sent to *Canterbury* college in *Oxford*, after having passed some time in the Cardinal's family : So that notwithstanding the *UTOPIA* is, beyond all doubt, no other than a beautiful fiction ; yet there is great probability that this conversation actually happened, and, it may be, Sir *Thomas More* himself delivered those things which he thought fit, in this discourse, to put into the mouth of *Raphael*, who declares the whole matter thus :

“ There are dreadful punishments enacted
 “ against thieves, but it were much better to
 “ make such good provisions, by which
 “ every man might be put in a method how
 “ to

" to live, and so be preserved from the fatal
 " necessity of stealing, and of dying for it.
 " There has been care enough taken for that,
 " said he, there are many handicrafts, and
 " there is husbandry, by which they may
 " make a shift to live, unless they have a
 " greater mind to follow ill courses. That
 " will not serve your turn, said I, for many
 " lose their limbs in civil or foreign wars,
 " as lately in the *Cornish* rebellion, and some
 " time ago in your wars with *France*, who
 " being thus mutilated in the service of their
 " King and country, can no more follow
 " their old trades, and are too old to learn
 " new ones: But since wars are only acci-
 " dental things, and have intervals, let us
 " consider those things that fall out every
 " day. There is a great number of noble
 " men among you, that live not only idle
 " themselves as drones, subsisting by other
 " men's labours, who are their tenants,
 " and whom they pare to the quick, and
 " thereby raise their revenues; this being the
 " only instance of their frugality, for in all
 " other things they are prodigal, even to the
 " beggaring of themselves: But besides this,
 " they carry about with them a huge num-
 " ber of idle fellows, who never learned any
 " art by which they may gain their living;

" and these, as soon as either their Lord dies,
 " or they themselves fall sick, are turned out
 " of doors; for your Lords are readier to feed
 " idle people, than to take care of the sick;
 " and often the heir is not able to keep toge-
 " ther so great a family as his predecessor
 " did: Now when the stomachs of those
 " that are thus turned out of doors, grow
 " keen, they rob no less keenly; and what else
 " can they do? for after that, by wandering
 " about, they have worn out both their
 " health and their cloaths, and are tattered,
 " and look ghastly, men of quality will not
 " entertain them, and poor men dare not do
 " it; knowing that one who has been bred
 " up in idleness and pleasure, and who was
 " used to walk about with his sword and
 " buckler, despising all the neighbourhood
 " with an insolent scorn, as far below him,
 " is not fit for the spade and mattock: Nor
 " will he serve a poor man for so small a
 " hire, and in so low a diet as he can afford.
 " To this he answered, This sort of men
 " ought to be particularly cherished among
 " us, for in them consists the force of the
 " armies for which we may have occasion;
 " since their birth inspires them with a no-
 " bler sense of honour, than is to be found
 " among Tradesmen or Ploughmen. You
 " may

" may as well say, replied I, that you must
 " cherish thieves on the account of wars, for
 " you will never want the one, as long as
 " you have the other; and as robbers prove
 " sometimes gallant soldiers, so soldiers prove
 " often brave robbers; so near an alliance
 " there is between those two sorts of life.
 " But this bad custom of keeping many ser-
 " vants, that is so common among you, is
 " not peculiar to this nation. In *France*
 " there is yet a more pestiferous sort of peo-
 " ple, for the whole country is full of sol-
 " diers, that are still kept up in time of
 " peace; if such a state of a nation can be
 " called a peace: And these are kept in pay
 " upon the same account that you plead for
 " those idle retainers about noblemen: This
 " being a maxim of those pretended States-
 " men, that it is necessary for the public
 " safety, to have a good body of *veteran*
 " soldiers ever in readiness. They think raw
 " men are not to be depended on, and they
 " sometimes seek occasions for making war,
 " that they may train up their soldiers in the
 " art of cutting throats, or, as *Salust* observed,
 " for keeping their hands in use, that they
 " may not grow dull by too long an inter-
 " mission. But *France* has learned to its
 " cost, how dangerous it is to feed such

" beasts. - The fate of the *Romans*, *Carthaginians*, and *Syrians*, and many other nations, and cities, which were both over-turned, and quite ruined by those standing armies, should make others wiser :
 " And the folly of this maxim of the *French* appears plainly even from this, that their trained soldiers find your raw men prove often too hard for them; of which I will not say much, lest you may think I flatter the *English* nation. Every day's experience shews, that the mechanicks in the towns, or the clowns in the country, are not afraid of fighting with those idle gentlemen, if they are not disabled by some misfortune in their body, or dispirited by extream want ; so that you need not fear, that those well-shaped and strong men, (for it is only such that noblemen love to keep about them, till they spoil them) who now grow feeble with ease, and are softened with their effeminate manner of life, would be less fit for action if they were well bred and well employed. And it seems very unreasonable, that for the prospect of a war, which you need never have but when you please, you should maintain so many idle men, as will always disturb you in time of peace, which is ever to be
 " more

" more considered than war. But I do not
 " think that this necessity of stealing arises
 " only from hence, there is another cause of
 " it that is more peculiar to *England*. What
 " is that? said the Cardinal: The increase of
 " pasture, said I, by which your sheep, that
 " are naturally mild, and easily kept in or-
 " der, may be said now to devour men, and
 " unpeople, not only villages, but towns:
 " For wherever it is found, that the Sheep
 " of any soil yield a softer and richer wool
 " than ordinary, there the nobility and gen-
 " try, and even those holy men the abbots,
 " not contented with the old rents which
 " their farms yielded, nor thinking it enough
 " that they, living at their ease, do no good
 " to the public, resolve to do it hurt instead
 " of good. They stop the course of agri-
 " culture, inclose grounds, and destroy houses
 " and towns, reserving only the churches,
 " that they may lodge their sheep in them:
 " And, as if forests and parks had swallowed
 " up too little soil, those worthy country-
 " men turn the best inhabited places into
 " solitudes; for when any unsatiable wretch,
 " who is a plague to his country, resolves
 " to inclose many thousand acres of ground,
 " the owners, as well as tenants, are turned
 " out of their possessions, by tricks, or by
 " main

" main force, or being wearied out with ill
 " usage, they are forced to sell them. So
 " those miserable people, both men and wo-
 " men, married, unmarried, old and young,
 " with their poor, but numerous families,
 " (since country busines requires many
 " hands) are all forced to change their seats,
 " not knowing whither to go ; and they
 " must sell for almost nothing, their hou-
 " hold-stuff, which could not bring them
 " much money, even tho' they might stay
 " for a buyer : When that little money is at
 " an end, for it will be soon spent ; what is
 " left for them to do, but either to steal,
 " and so to be hanged, (God knows how
 " justly) or to go about and beg ? And if
 " they do this, they are put in prison as idle
 " vagabonds ; whereas they would willingly
 " work, but can find none that will hire
 " them ; for there is no more occasion for
 " country labour, to which they have been
 " bred, when there is no arable ground
 " left. One shepherd can look after a flock,
 " which will stock an extent of ground that
 " would require many hands, if it were to
 " be ploughed and reaped. This likewise
 " raises the price of corn in many places.
 " The price of wool is also so risen, that the
 " poor people who were wont to make
 " cloth,

" cloth, are no more able to buy it ; and this
 " likewise makes many of them idle : For
 " since the increase of pasture, God has pu-
 " nished the avarice of the owners, by a rot
 " among the sheep, which has destroyed
 " vast numbers of them, but had been more
 " justly laid upon the owners themselves.
 " But suppose the sheep should increase ever
 " so much, their price is not like to fall ;
 " since tho' they cannot be called a *Mono-*
 " *Poly*, because they are not engrossed by one
 " person, yet they are in so few hands, and
 " these are so rich, that, as they are not pref-
 " sed to sell them sooner than they have a
 " mind to it, so they never do it till they
 " have raised the price as high as is possible.
 " And on the same account it is, that the
 " other kinds of cattle are so dear, and so
 " much the more, because that many villages
 " being pulled down, and all country labour
 " being much neglected, there are none that
 " look after the breeding of them. The rich
 " do not breed cattle as they do sheep, but
 " buy them lean, and at low prices ; and
 " after they have fattened them on their
 " grounds, they sell them again at high rates.
 " And I do not think that all the inconve-
 " niencies that this will produce, are yet ob-
 " served ; for as they sell the cattle dear, so
 " if

" if they are consumed faster than the breeding countries, from which they are brought, can afford them ; then the stock must decrease, and this must needs end in a great scarcity ; and by these means, this your island, that seemed, as to this particular, the happiest in the world, will suffer much, by the cursed avarice of a few persons ; besides that, the rising of corn makes all people lessen their families as much as they can ; and what can those who are dismissed by them do, but either beg or rob ? And to this last, a man of a great mind is much sooner drawn, than to the former. Luxury likewise breaks in apace upon you, to set forward your poverty and misery ; there is an excessive vanity in apparel, and great cost in diet ; and that not only in noblemen's families, but even among tradesmen, and among the farmers themselves, and among all ranks of persons. You have also many infamous houses, and, besides those that are known, the taverns and alehouses are no better ; add to these, dice, cards, tables, foot-ball, tennis, and coits, in which money runs fast away ; and those that are initiated into them, must, in conclusion, betake themselves to robbing for a supply. Banish those plagues, and

" give orders that these, who have dispeopled
 " so much soil, may either rebuild the vil-
 " lages that they have pulled down, or let
 " out out their grounds to such as will do it :
 " Restrain those engrossings of the rich, that
 " are as bad almost as *Monopolies*; leave fewer
 " occasions to idleness; let agriculture be set
 " up again, and the manufacture of the wool
 " be regulated, that so there may be work
 " found for those companies of idle people,
 " whom want forces to be thieves, or who
 " now being idle vagabonds, or useless ser-
 " vants, will certainly grow thieves at last.
 " If you do not find a remedy to these
 " evils, it is a vain thing to boast of your
 " severity of punishing theft; which, tho'
 " it may have the appearance of justice, yet,
 " in itself, it is neither just nor convenient:
 " For if you suffer your people to be ill edu-
 " cated, and their manners to be corrupted
 " from their infancy, and then punish them
 " for those crimes to which their first educa-
 " tion disposed them, what else is to be con-
 " cluded from this, but that you first make
 " thieves, and then punish them?

" While I was talking thus, the Counsel-
 " lor that was present had prepared an an-
 " swer, and had resolved to resume all I had

" said, according to the formality of a de-
 " bate, in which things are generally repeated
 " more faithfully than they are answered ;
 " as if the chief trial that were to be made,
 " were of men's memories. So he said to me,
 " You have talked prettily, for a stranger,
 " having heard of many things among us,
 " which you have not been able to consider
 " well ; but I will make the whole matter
 " plain to you, and will first repeat in order
 " all that you have said, then I will shew
 " how much the ignorance of our affairs has
 " misled you, and will, in the last place, an-
 " swer all your arguments. And that I may
 " begin where I promised, there were four
 " things—Hold your peace, said the Car-
 " dinal, for you will not have done soon that
 " begin thus ; therefore we will at present
 " ease you of the trouble of answering, and
 " reserve it to our next meeting, which shall
 " be to-morrow, if *Raphael*'s affairs and
 " yours can admit of it : But, *Raphael*, said
 " he to me, I would gladly know of you
 " upon what reason it is that you think theft
 " ought not to be punished by death ? Would
 " you give way to it ? Or do you propose
 " any other punishment that will be more
 " useful to the public ? For since death does
 " not

" not restrain theft, if men thought their lives
 " would be safe, what fear or force could
 " restrain ill men? On the contrary, they
 " would look on the mitigation of the pu-
 " nishment, as an invitation to commit more
 " crimes. I answered, It seems to me a
 " very unjust thing to take away a man's life
 " for a little money; for nothing in the
 " world can be of equal value with a man's
 " life: And if it is said, that it is not for the
 " money that one suffers, but for his break-
 " ing the law; I must say, extream justice
 " is an extream injury; for we ought not to
 " approve of these terrible laws that make the
 " smallest offences capital; nor of that opi-
 " nion of the Stoicks, that makes all crimes
 " equal, as if there were no difference to be
 " made between the killing a man, and the
 " taking his purse, between which, if we
 " examine things impartially, there is no like-
 " ness nor proportion. God has commanded
 " us not to kill, and shall we kill so easily
 " for a little money? But if one shall say,
 " That by that law we are only forbid to
 " kill any, except when the laws of the land
 " allow of it; upon the same grounds, laws
 " may be made to allow of adultery and per-
 " jury, in some cases; for God having taken

" from us the right of disposing, either of
 " our own, or of other peoples lives, if it is
 " pretended that the mutual consent of men
 " in making laws, allowing of manslaughter
 " in cases, in which God has given us no
 " example, frees people from the obligation
 " of the divine law, and so makes murder a
 " lawful action ; what is this, but to give
 " a preference to human laws before the di-
 " vine ? And if this is once admitted, by the
 " same rule men may, in all other things,
 " put what restrictions they please upon the
 " laws of God. If by the *Mosaical* law, tho'
 " it was rough and severe, as being a yoke
 " laid on an obstinate and servile nation, men
 " were only fined, and not put to death for
 " theft ; we cannot imagine that, in this
 " new law of mercy, in which God treats
 " us with the tenderness of a father, he has
 " given us a greater licence to cruelty, than
 " he did to the *Jews*. Upon these reasons
 " it is, that I think the putting thieves to
 " death is not lawful ; and it is plain and
 " obvious that it is absurd, and of ill conse-
 " quence to the common-wealth, that a thief
 " and a murderer should be equally punished :
 " For if a robber sees that his danger is the
 " same, if he is convicted of theft, as if he
 " were

" were guilty of murder, this will naturally
 " set him on to kill the person whom, other-
 " wise, he would only have robbed, since, if
 " the punishment is the same, there is more
 " security, and less danger of discovery; when
 " he that can best make it is put out of the
 " way; so that the terrifying thieves too
 " much, provokes them to cruelty.

" But as to the question, What more con-
 " venient way of punishment can be found?
 " I think it is much easier to find out that,
 " than to invent any thing that is worse;
 " why should we doubt but the way that
 " was so long in use among the old *Romans*,
 " who understood so well the arts of go-
 " vernment, was very proper for their pu-
 " nishment? They condemned such as they
 " found guilty of great crimes, to work their
 " whole lives in quarries, or to dig in mines
 " with chains about them. But the method
 " that I liked best, was that which I ob-
 " served in my travels in *Perfia*, among the
 " *Polylerits*, who are a considerable and well-
 " governed people. They pay a yearly tri-
 " bute to the king of *Perfia*; but in all
 " other respects they are a free nation, and
 " governed by their own laws. They lie
 " far from the sea, and are environed with
 " hills;

" hills ; and, being contented with the produc-
 " tions of their own country, which is
 " very fruitful, they have little commerce
 " with any other nation ; and as they, ac-
 " cording to the genius of their country,
 " have no appetite of enlarging their borders ;
 " so their mountains, and the pension that
 " they pay to the *Perſian*, secure them from all
 " invasions. Thus they have no wars among
 " them ; they live rather conveniently than
 " splendidly, and may be rather called a
 " happy nation, than either eminent or fa-
 " mous ; for I do not think that they are
 " known, so much as by name, to any but
 " their next neighbours. Those that are
 " found guilty of theft among them, are
 " bound to make restitution to the owner,
 " and not as it is in other places, to the
 " Prince, for they reckon that the Prince
 " has no more right to the stolen goods than
 " the thief ; but if that which was stolen is
 " no more in being, then the goods of the
 " thieves are estimated, and restitution being
 " made out of them, the remainder is given
 " to their wives and children : And they
 " themselves are condemned to serve in the
 " public works ; but are neither imprisoned
 " nor chained, unless there happen to be

" some

" some extraordinary circumstances in their
 " crimes. They go about loose and free,
 " working for the public : If they are idle,
 " or backward to work, they are whipp'd ;
 " but if they work hard, they are well
 " used, and treated without any mark of re-
 " proach, only the lists of them are called
 " always at night, and then they are shut
 " up, and they suffer no other uneasiness,
 " but this of constant labour ; for as they
 " work for the public, so they are well en-
 " tertained out of the public stock, which is
 " done differently in different places : In
 " some plaees, that which is bestowed on
 " them, is raised by a charitable contribu-
 " tion ; and though this way may seem un-
 " certain, yet so merciful are the inclinations
 " of that people, that they are plentifully sup-
 " plied by it ; but in other places, public
 " revenues are set aside for them ; or there is
 " a constant tax of a poll-money raised for
 " their maintenance. In some places they are
 " set to no public work, but every private
 " man that has occasion to hire workmen,
 " goes to the market-places and hires them
 " of the public, a little lower than he would
 " do a free-man. If they go lazily about
 " their task, he may quicken them with the
 " whip.

" whip. By this means there is always some
 " piece of work or other to be done by them ;
 " and beside their livelihood, they earn some-
 " what still to the public. They wear all a
 " peculiar habit, of one certain colour, and
 " their hair is cropt a little above their ears,
 " and a little of one of their ears is cut off.
 " Their friends are allowed to give them ei-
 " ther meat, drink, or clothes, so they are of
 " their proper colour ; but it is death, both to
 " the giver and taker, if they give them
 " money ; nor is it less penal for any freeman
 " to take money from them, upon any ac-
 " count whatsoever : And it is also death
 " for any of these *Slaves* (so they are called)
 " to handle arms. Those of every division
 " of the country, are distinguished by a pe-
 " culiar mark : And it is capital to lay that
 " aside ; and so it is also to go out of their
 " bounds, or to talk with a slave of another
 " jurisdiction ; and the very attempt of an
 " escape, is no less penal than an escape it-
 " self ; it is death for any other slave to be
 " accessory to it : If a freeman engages in it,
 " he is condemned to slavery : Those that
 " discover it are rewarded ; if freemen, in
 " money ; and if slaves, with liberty, toge-
 " ther with a pardon for being accessory to it ;

" that

" that so they may find their account, rather
 " in repenting of their accession to such a de-
 " sign, than in persisting in it.
 " These are their laws and rules in this
 " matter ; in which both the gentleness and
 " the advantages of them are very obvious ;
 " since, by these means, as vices are de-
 " stroyed, so men are preserved ; but are so
 " treated, that they see the necessity of being
 " good ; and by the rest of their life they
 " make reparation for the mischief they had
 " formerly done. Nor is there any hazard
 " of their falling back to their old customs :
 " And so little do travellers apprehend mif-
 " chief from them, that they generally make
 " use of them for guides, from one jurif-
 " diction to another ; for there is nothing
 " left them by which they can rob, or be
 " the better for it, since as they are disarmed,
 " so the very having of money is a sufficient
 " conviction : And as they are certainly pu-
 " nished if discovered, so they cannot hope
 " to escape ; for their habit being, in all
 " the parts of it, different from what is
 " commonly worn, they cannot fly away,
 " unless they should go naked, and even
 " then their cropp'd ear would betray them.
 " The only danger to be feared from them,

" is their conspiring against the government :
 " But those of one division and neighbour-
 " hood can do nothing to any purpose, unless
 " a general conspiracy were laid amongst all
 " the slaves of the several jurisdictions, which
 " cannot be done, since they cannot meet
 " or talk together ; nor will any venture on
 " a design, where the concealment would
 " be so dangerous, and the discovery so pro-
 " fitable : and none of them is quite hope-
 " less of recovering his freedom, since, by
 " their obedience and patience, and by giv-
 " ing grounds to believe, that they will
 " change their manner of life for the future,
 " they may expect, at last, to obtain their
 " liberty ; and some are every year restored
 " to it, upon the good character that is given
 " of them. When I had related all this,
 " I added, That I did not see why such
 " a method might not be followed with
 " more advantage, than could ever be ex-
 " pected from that severe justice which the
 " Counsellor magnified so much. To all
 " this he answered, That it could never be
 " so settled in *England*, without endangering
 " the whole nation by it ; and as he said
 " that, he shook his head, and made some
 " grimaces, and so held his peace ; and all

" the company seemed to be of his mind :
 " only the Cardinal said, It is not easy to
 " guess whether it would succeed well or ill,
 " since no trial has been made of it : But if,
 " when the sentence of death were passed
 " upon a thief, the prince would reprieve
 " him for a while, and make the experi-
 " ment upon him, denying him the privi-
 " lege of a sanctuary ; then if it had a good
 " effect upon him, it might take place ; and
 " if it succeeded not, the worst would be, to
 " execute the sentence on the condemned per-
 " sons at last. And I do not see, said he, why
 " it would be either unjust or inconvenient,
 " or at all dangerous, to admit of such a
 " delay : And I think the vagabonds ought
 " to be treated in the same manner, against
 " whom, though we have made many laws,
 " yet we have not been able to gain our
 " end by them all. When the Cardinal had
 " said this, then they all fell to commend the
 " motion, tho' they had despised it when it
 " came from me ; but they did more parti-
 " cularly commend that concerning the va-
 " gabonds, because it had been added by
 " him.
 " I do not know whether it be worth the
 " while to tell what followed, for it was
 " very

" very ridiculous ; but I shall venture at it,
 " for as it is not foreign to this matter, so
 " some good use may be made of it. There
 " was a Jester standing by, that counterfeited
 " the fool so naturally, that he seemed to
 " be really one. The jests at which he
 " offered were so cold and dull, that we
 " laughed more at him than at them ; yet
 " sometimes he said, as it were by chance,
 " things that were not unpleasant ; so as to
 " justify the old proverb, *That he who throws*
 " *the dice often, will sometimes have a lucky*
 " *bit.* When one of the company had said,
 " that I had taken care of the thieves, and
 " the cardinal had taken care of the vag-
 " bonds, so that there remained nothing,
 " but that some public provision might be
 " made for the poor, whom sickness, or
 " old age, had disabled from labour : Leave
 " that to me, said the Fool, and I shall take
 " care of them ; for there is no sort of peo-
 " ple whose sight I abhor more, having been
 " so often vexed with them, and with their
 " sad complaints ; but as dolefully soever
 " as they have told their tale to me, they
 " could never prevail so far as to draw one
 " penny of money from me ; for either I
 " had no mind to give them any thing, or,
 " when

" when I had a mind to it, I had nothing to
 " give them : And they now know me so
 " well, that they will not lose their labour
 " on me, but let me pass without giving
 " me any trouble, because they hope for
 " nothing from me, no more, in faith, than
 " if I were a *priest* : But I would have a
 " law made, for sending all these beggars
 " to monasteries, the men to the *Bene-*
dictines to be lay-brothers, and the wo-
 " men to be nuns. The Cardinal smiled,
 " and approved of it in jest ; but the rest
 " liked it in earnest. There was a Divine
 " present, who tho' he was a grave morose
 " man, yet he was so much pleased with
 " this reflection that was made on the priests
 " and the monks, that he began to play
 " with the Fool, and said to him, This will
 " not deliver you from all beggars, except
 " you take care of us *Friars*. That is
 " done already, answered the Fool, for the
 " Cardinal has provided for you, by what
 " he proposed for the restraining vagabonds,
 " and setting them to work, for I know no
 " vagabonds like you. This was well en-
 " tertained by the whole company, who,
 " looking at the Cardinal, perceived that
 " he was not ill pleased at it ; only the
 " Friar

" Friar himself was so bit, as may be easily
 imagined, and fell out into such a passion,
 that he could not forbear railing at the
 Fool, and calling him *Knave*, *Slanderer*,
Backbiter, and *Son of Perdition*, and
 cited some dreadful threatenings out of the
 Scriptures against him."

F I N I S.

